John Cary, Esq; Appellant.

John White, Esq; and *Katherine* his Wife, surviving Administrators of Sir *Humphry Jervis*, Kt. deceas'd, } Respondents.

The Respondents CASE.

1688. IN the Year 1688, Sir *Humphry Jervis*, late of *Dublin*, deceas'd, had a Ship in the Port of *Bristol* (intended for *Ireland*, call'd, *The* Mary *of* Dublin, *Stephen Symons*, Master, which the Appellant hired to carry Goods to the Islands of *Tercera*, *Maderas*, *Barbadoes*, and *Jamaica*, and to return back to *Bristol* from *Jamaica*.

Symons, by Sir *Humphry*'s Directions, took up 200 *l.* on Bottom-ree, to fit out the Ship for the Voyage, to pay Seamens Wages, Port-Charges, *&c.* that Sum being thought by Sir *Humphry* 50 *l.* more than sufficient, the Ship being only 90 Tuns.

The Ship arriv'd at the several Islands, and the Appellant's Goods deliver at each Place, according to his Orders; but in her Return Home was lost.

Sir *Humphry* acquiesced in the Loss of his Ship and Freight, and expected never to hear more concerning her.

1702. But in 1702 Mr. *Cary* filed a Bill in the *Chancery* of *Ireland* against Sir *Humphry*, demanding 600 *l.* of him, as so much pretended to be laid out by his Factor at *Jamaica*, for the Use and upon the Account of the Ship; which Demand was afterwards increased to 789 *l.* 13 *s.* 1 *d.*

Sir *Humphry* put in his Answer, and denyed he gave any Orders to the Master of the Ship, or any other, to take up Money for the Use of the Ship, but on Bottom-ree; and insisted he ought to pay none: And soon after dyed. And Mr. *Cary* revived the Suit against the Respondents, as his Administrators.

18 *February* 1708. The Cause was heard the 18th of *February*, 1708, by the Lord *Chancellor Freeman*, (who looking on the Demand to be very stale, and not one Particular prov'd of any Disbursement) dismiss'd Mr. *Cary*'s Bill without Costs; but if he gave the Respondents any farther Trouble, to pay Costs.

28 *March* 1710. Mr. *Cary* appeal'd to your Lordships from that Decree of Dismission; and on the 28th of *March* 1710, your Lordships did order the Bill to be retained, and directed this Issue to be tryed at the Common Pleas in *Ireland*, *viz.* *Whether any and what Sums of Money were necessarily laid out by, or by the Order of, the Appellant*, John Cary, *for Payment of Seamens Wages, Provisions, or otherwise, for the necessary Repairs and Use of the Ship, in the Appeal mentioned, during the Voyage mentioned in the Charter-Party, in Proof in this Cause.*

24 *Novem.* 1710. In Pursuance of your Lordships Order, the Issue was on the 24th of *November*, 1710, try'd at the Common Pleas Bar, by a Jury of very substantial Citizens of *Dublin*, and they gave the following Verdict, *viz.* *We find no Sums of Money were necessarily laid out by, or by Order of, the Plaintiff* John Cary, *for the Payment of Seamens Wages, Provisions, or otherwise, for the necessary Repairs and Use of the Ship, in the Plaintiff's Appeal mentioned, during the Voyage mentioned in the Charter-Party, in Proof in this Cause.*

Upon the Appellant's Application to the Court of *Chancery*, the Court granted him another Tryal.

12 *May* 1711. And on the 12th of *May*, 1711, another Jury of Citizens of *Dublin*, of great Substance and Credit, gave the like Verdict at the Common Pleas Bar.

4 *June* 1711. The Appellant moved for another Tryal, which the Court of *Chancery* refused to grant, declaring, That the Facts tryed were proper for the Cognizance of a Jury: And then dismissed his Bill with Costs, from the Time of your Lordships Order for the Tryal.

From which Decree Mr. *Cary* has appealed to your Lordships, and thereby prays your Lordships to resume the Cognizance of the Cause, and to reverse the said Dismission, and relieve him.

The Respondents hope the Dismission will be confirmed.

1*st*, For that the Appellant (if he had any Demand of Sir *Humphry*) would, in all Probability, in less Time, have made it known; for the pretended Disbursements, if any, were in 1689, and the Appellant's Bill not brought 'til 1702. And it is very likely Sir *Humphry* would never have heard of it, but that he had then sued the Appellant in *Dublin*, for 77 *l.* which he owed him on another Account, and recover'd it.

2*dly*, For that the great Stress (on the Appellant's not being able to shew or prove any of the Particulars of the pretended Disbursements) is laid on the Earthquake in *Jamaica*, where the Papers relating thereto are alledg'd to be lost; which seems to have no great Weight; for that the Earthquake was several Years after the pretended Disbursements, in which Time the Appellant might have had from his Factor the Particulars.

3*dly*, For that the Matter to be tryed was proper only for a Jury, which two Verdicts have determined; for it has been never known, that any more than two Verdicts (especially at the Bar, and those not so much as suspected to be obtained by any Practice) has been required to satisfy the Conscience of the Court.

And therefore the Respondents humbly hope your Lordships will dismiss the Appeal with Costs.

Thomas Powys.
Spencer Cowper.

John Cary, Esq; Appellant.

John White, Esq; and his Wife, Administrators of Sir *Humphry Jervis*, Kt. deceas'd, Respondents.

The Respondent's CASE.

To be heard at the Bar of the *House of Lords*, on *Saturday* the [redacted] *June* 1717.